

REMARKS

Entry of the foregoing and reexamination and reconsideration of the subject application, as amended, pursuant to and consistent with 37 C.F.R. §1.112, are respectfully requested in light of the following remarks.

Upon entry of the foregoing amendment, Claims 1-25, 40-43 and 48-49 are in this application and Claims 26-39 and 44-47 are canceled.

The acknowledgment of the claim for foreign priority and receipt of the certified copy in the earlier application is noted, with appreciation.

It would be appreciated if the Examiner would also acknowledge the claim for domestic priority on page 1 of the specification. It is noted that there is a discrepancy between applicant's records and those of the USPTO with respect to the filing date of parent Appln. No. 09/890,653. The PTO records give the date as November 1, 2001, but applicant's records show receipt by the USPTO on November 2, 2001. Applicant tried repeatedly to obtain correction in the parent file, but no response to the requests for correction was received. If applicant is required to correct paragraph [0001] of the specification to agree with the official records (even though applicant believes the official records to be incorrect), please so advise.

Applicant also requests that the Examiner acknowledge the Information Disclosure Statement which was filed herein on July 18, 2003 and return an Examiner-initialed copy of applicant's Form PTO-1449 with the next official communication.

In response to the fourteen-way restriction requirement, applicant elects, with traverse, Group VIII, Claim 1-23, draw to a process for preparing compounds of formula (I) wherein W is $-CR^4$, employing a starting material of formula (II).

The restriction requirement is traversed in part. Specifically, the restriction requirement is traversed with respect to elected Group VIII and non-elected Groups IX, XII and XIV.

With respect to Groups I through VII, in all of which W was nitrogen, the Examiner will note that such subject matter has been canceled from the claims of this application in compliance with the restriction requirement. Of course, applicant reserves the right to file one or more divisional or other continuing applications directed to the canceled subject matter.

With respect to Groups X and XI, it is respectfully pointed out that these groups did not exist because Claims 26-39 (which have been canceled by the foregoing amendment) never included the possibility of W being $-CR^4$. Such subject matter was already allowed in the parent application, now U.S. Patent No. 6,620,944, and has never been claimed in this divisional application.

Restriction between elected Group VIII and non-elected Group XIII is not traversed and the claims or portions of claims drawn to Group XIII have been canceled by the foregoing amendment. Applicant reserves the right to file one or more divisional or other continuing applications directed to the canceled subject matter.

The restriction requirement is traversed with respect to elected Group VIII and non-elected Group IX, Claims 24 and 25. It is believed that the Examiner has misunderstood the process of Group IX. These claims depend from and require the

very same step as the process of elected Group VIII, that is, reacting (II) with a cyanide salt to afford (I). Group IX/Claims 25 and 26 simply specify that in the course of the Group VIII process, an intermediate of formula (III) is formed; in the process of Claim 25, the intermediate (III) cyclizes under the conditions of the reaction; in the process of Claim 26, the intermediate III is cyclized in the presence of base in the reaction. The very fact that the Group IX claims depend from independent Claim 1 of Group VIII emphasizes the fact that the Group IX claims are directed to an embodiment of the elected Group VIII claims. Therefore, it is believed to be appropriate to consider Groups VIII and IX together. Withdrawal of the restriction requirement between elected Group VIII and non-elected Group IX is believed to be in order and is earnestly solicited.

The restriction requirement is also traversed with respect to elected Group VIII and non-elected Group XII. Group XII is drawn to the compounds of formula (II) wherein W is $-CR^4$. The compounds of formula (II) are starting materials in the process of elected Group VIII, thus are clearly related; indeed, Claim 1 of Group VIII can be viewed as an independent claim for the use of the formula (II) product of Group XII. According to Annex B, part 1(e)(i), of the PCT rules quoted by the Examiner, inclusion of an independent claim for a given product and an independent claim for a use of said product is permissible. Therefore, withdrawal of the restriction requirement between elected Group VIII and non-elected Group XII is believed to be in order and is earnestly solicited.

In addition, the restriction requirement is traversed with respect to elected Group VIII and non-elected Group XIV. Group XIV is drawn to the compounds of formula (III) wherein W is $-CR^4$. As noted hereinabove, the compounds of formula

(III) are intermediates in the process of elected Group VIII. Thus, these compounds are certainly part of the same general inventive concept as is represented by the process of elected Group VIII. Therefore, withdrawal of the restriction requirement between elected Group VIII and non-elected Group XIV is believed to be in order and is earnestly solicited.

In view of the foregoing, examination of all of Group VIII, IX, XII and XIV is respectfully urged.

Respectfully submitted,

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